



OJO ENCINO CHAPTER
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**Protest Letter Regarding:
January 2015 Oil/Gas Lease Sale
BLM Farmington Field Office**
written by

Ojo Encino Chapter Government (Navajo Nation)

The Ojo Encino Chapter Government (Chapter) is particularly concerned about parcels 2 and 3 due to the high number of chapter members who live in southern Counselor. The chapter had previously commented on these parcels during the October 2014 lease process which should have formally established the chapter's interest and need for consultation during the January 2015 lease sale process. Also, due to potential public process discrepancies and the future lease implications of split estate within Ojo Encino, the chapter feels compelled to comment on the entire January 2015 lease sale.

Potential Drainage Situation Issues (Refers to Manual 3160-2 Drainage Protection Guidelines)

^ Original did not include parcels 2 and 3

- The original Potential Drainage Situation (PDS) report did not mention parcels 2 or 3. Looking at maps and further discussions with the BLM did not uncover any drainage situation for either of these parcels. It is assumed that the parcels listed on the original PDS report would have gone through administrative and technical reviews before being put forward for leasing, per Manual H-3160-2 .14 A.
- The fact that two parcels were not listed on this report and now are listed on the addendum report suggests that proper procedures were not followed regarding these parcels. Considering that these parcels have Navajo structures on them, have had infrastructure improvements, and could potentially be used for future housing development should behave the BLM to consider ensuring that its internal review of these parcels were done in a timely manner consistent with Manual 3160-2.

^ Addendum parcels

◦ Use lease value loss (Not a category)

- There are 4 categories that are listed for types of drainage situations:

1. Ownership. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on adjacent lands not owned by the United States. APDS exists for Indian lands where there is production of oil or gas or geothermal resources from a well on adjacent lands not owned by the Indian tribe or allottee involved.

2. Royalty Rate. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on an adjoining Federal lease bearing a lower royalty rate. A PDS exists for Indian lands where there is production of oil or gas or geothermal resources from a well on an adjoining tribal/allotted lease (same tribe or allottee) bearing a lower royalty rate.

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3. Lease Account. A PDS exists for Federal lands where there is production of oil or gas or geothermal resources from a well on an adjoining Federal lease when the revenues from that lease are distributed to different accounts. Specifically, this applies to wells on public domainlands draining acquired lands or wells on acquired lands draining public domain lands. See Handbook H-3160-2 for distribution of monies received.

4. Participation. A potential drainage situation exists for Federal lands where there is production of oil or gas or geothermal resources from a well from which the Federal Government receives royalties, but at a smaller participation or allocation rate than the Federal lands offented. Specifically, this applies to split mineral interests (e.g., 50 percent Federal, 50 percent State), and lower Federal participation encountered in adjacent units and CA's.

(Manual H-3160-2 .06 A)

- The initial PDS report indicated a royalty loss due to non-federal wells potentially draining federal minerals. This would fall under the PDS category of Ownership. However, the addendum utilizes a category referred to as "decreased lease value because of drainage" (PDS Report Addendum). However, this situation does not fall into any of the 4 categories defined in the drainage manual. The potentially offending wells are on federal leases and thus there is no loss in royalties, there is no appearance of a royalty differential occurring, no issues involving money distribution, or a differential participation rate. It does not appear that the loss of initial lease value is listed in any of the 4 drainage categories and is not sufficient to declare a PDS.
- The chapter recommends that any wells that do not have a drainage situation as defined by BLM manual 3160-2 be removed from the Jan 2015 lease sale.

◦ **Uses non-completed wells for PDS's**

- The addendum PDS lists a majority of wells as APD or NOS stages. The drainage manual defines a PDS as follows:

Potential Drainage Situation (PDS): a PDS exists when Federal or Indian lands are offset by a producing well on adjoining fee land, lower royalty, participation or allocation Federal or Indian land, different ownership Indian land, or Federal land for which the revenues are distributed to different accounts, provided the Federal or Indian spacing unit, or common well development or spacing pattern, is not protected by (1) a well that is then producing from the same reservoir(s); (2) a well that formerly produced from said reservoir(s) and is now exhausted; or (3) a well that sufficiently but unsuccessfully tested said reservoir(s). When such a Federal or Indian spacing unit (pattern) is offset by multiple wells and/or wells with multiple completions, each well and reservoir involved is a separate potential drainage situation. (Manual H-3160-2 Glossary)

- Further examination of manual H-3160-2 also indicates that a well review is an initial step to determining a PDS. The initial steps of the well review process is stated as:

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1. Identify all well completions and recompletions. Note that surface location and bottom-hole location can differ.

2. Identify and separate all wells, by completions, into two categories: (1) completions that do not create PDS's (document and record method of determination); and (2) completions that do create PDS's (these completions will require a detailed administrative review). All wells on or adjacent to jurisdictional land may create PDS's. Wells on fee land not adjacent to jurisdictional land do not create PDS's. (Manual H-3160-2 .1 .11 A)

- By reading the definitions and procedures, utilizing non-producing/completed wells does not appear to be in proper conformance with ascertaining a potential drainage situation. Thus any parcels which do not list a producing or completed well should not be considered for leasing since a PDS cannot be determined and drainage was the main purpose for leasing these parcels.
- The chapter recommends that any parcels that are not being potentially drained by a producing well be removed from the January 2015 lease sale.

▲ **No publicly announced EOI for parcels ****

- On the NM BLM's website:

http://www.blm.gov/nm/st/en/prog/energy/oil_and_gas/expressions_of_interest/eoi_list.html

a listing of EOIs are maintained for the public. However, upon inspection it appears that no EOI is listed regarding the leases up for potential lease sale in January 2015. Although it is assumed that these parcels were put forward by the federal government. Also, only 3 of the 5 parcels were originally put forward by the BLM in its original PDS report.

- To build institutional trust the BLM should keep all EOIs public in regards to federal minerals. What triggered the lease sale of two additional parcels beyond the initial PDS report is still unknown (since these parcels were previously determined not to be a PDS).
- It should be noted that an EOI was discussed that was put forward by David Mankiewicz; however, it is difficult to understand how processes outlined in the BLM's Drainage manual were properly followed in the declaration of a drainage situation.

Tribal Consultation

▲ **Did not consult with Ojo Encino Chapter**

- The Ojo Encino chapter government had previously commented on parcels which are being considered for lease sale. The chapter government had specific concerns related to parcels 2 and 3 since they are located in southern Counselor which is an area considered to have a large number of Ojo Encino chapter members. These comments were officially received by the BLM for the public scoping period of the October 2014 lease sale.
- This should have established in the BLM's view that Ojo Encino had a tangible interests in parcels being leased in the January 2015 lease sale.
- However, the BLM did not engage the Ojo Encino Chapter government directly in any type of consultation meeting in regards to the January 2015 lease sale.

~~As a result, the chapter considers the BLM not to have fully executed its tribal trust responsibilities in~~
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consulting with the chapter government even though Ojo Encino Chapter has already formally stated its concerns with the lease of some of the parcels which are currently part of the January 2015 sale.

- Furthermore, Ojo Encino Chapter feels that the BLM may not have fully executed formal tribal consultation with the other local communities and feels that the BIA should ensure that the BLM executed proper consultation with the other chapters in the area.

Rotational Lease Policy

- ▲ The NM BLM states the following regarding its leasing:
Release Date: 10/25/13
Contacts: Theresa Herrera, 505-954-2021

BLM to Hold Rotational Federal Oil and Gas Lease Sales

Santa Fe, NM—The Bureau of Land Management (BLM) New Mexico, which includes Oklahoma, Kansas, and Texas, announces plans to hold rotational Oil and Gas Lease Sales for Federal mineral estate. Currently, BLM New Mexico offers for lease Federal mineral estate four times a year and is the only State that does not rotate oil and gas lease sales by District or Field Offices. A change to a rotational sale process would mean that the BLM New Mexico would still hold four sales per year, but only offer for sale Federal mineral estate within a certain District, Field and/or geographic area once per year. This strategy establishes a process to ensure orderly, effective, timely, and environmentally-responsible leasing of oil and gas resources on Federal minerals in New Mexico. The first rotational sale is scheduled for the April 2014 Oil and Gas Lease Sale, with parcels being offered from the Oklahoma Field Office.

The New Mexico State Office is currently developing a rotational sale schedule for the remainder of 2014 and 2015. It is anticipated that this schedule will be completed by the end of November 2013.

(http://www.blm.gov/nm/st/en/info/news_releases/2013/october/blm_to_hold_rotational.html)

- ▲ Since the BLM adopted this policy Farmington Field office area goes up for lease every October. The Ojo Encino chapter government along with other chapter governments participated in the public process for the October 2014 lease sale regarding some of the parcels up for current lease. Since the parcels were deferred it was felt that these governments would have sufficient time to commence in further consultation with the BLM regarding tribal trust federal mineral split estate lands. However, the announcement of attempting to lease Farmington Field office parcels in January was surprising, since this would usurp the BLM's own rotational lease policy and would substantially shorten the time available for proper consultation related to a very key and sensitive tribal trust issue.
- ▲ The Ojo Encino chapter is in favor of the BLM keeping in line with its own policies and deferring all 5 parcels until the appropriate lease cycle which will also facilitate the BLM's ability to fully discharge its tribal trust responsibilities in an appropriate complete manner, which it has been unable to do at this point regarding these parcels.

EJ Analysis not Locally specific

~~▲ The BLM Farmington field office has now been notified multiple times that their Environmental Justice analysis is~~
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not sufficient for the Navajo area in which they are leasing. During the EA comment period for the October 2014 lease sale the chapter government submitted a letter detailing its concerns regarding a lack of analysis pertinent to Navajo areas. The comment letter indicated census data tables the BLM could use and also offered assistance to the BLM if it was unable to find the census datasets.

- ▲ The data sets suggested to the BLM include census data which is broken down by chapter government. Thus the Navajo populations / communities in specific areas can be analyzed. This would seem to have been extremely important for this lease sale since all 5 parcels are not only within chapter boundaries but are also under their jurisdiction. Unfortunately, the BLM has continued to use a standard EJ analysis which is not pertinent nor created for the area which the lease sale will impact. The current analysis also makes it difficult to see the actual Navajo populations upon which these lease sales and subsequent probable development will impact.
- ▲ This consistent oversight by the BLM in its EJ analysis also seems to infer that they do not fully recognize the local governing entities that exist in areas which they lease. The Department of the Interior's current strategic plan mission area 3 goal #1 strategy #8 states: Strengthen self-governance and self-determination. The BLM not acknowledging the importance of Navajo Nation sub-divisions which are created by the Navajo Nation government does not seem to help further this particular strategy point.
- ▲ The chapter suggests that all 5 parcels are deferred so that a more appropriate and complete Environmental Justice analysis can be completed.

Impacts Analysis

▲ **Impact on future settlement patterns**

- Potential oil and gas development on all 5 parcels will likely have impacts on future housing settlement in the parcels. Many times Navajo settlement patterns in the area is based on family groups and relationships. As a result, any oil and gas development on these parcels is likely to have an impact on this Navajo cultural element, and will likely need further analysis and local tribal consultation.
- **Impact on potentially valuable lands which have access to infrastructure**
 - All 5 parcels have housing on them. There is also infrastructure improvements on these parcels which make them much more valuable for future housing development. The creation of oil and gas on the parcels may reduce the value of infrastructure investments on the parcels by reducing the likelihood of people choosing to build their homes in these improved areas due to the proximity to potential future oil and gas sites.

▲ **Impacts on current housing**

- All 5 parcels have Navajo structures and housing on them. These households were settled in their current locations for a multitude of reasons. However, allowing oil and gas development on these lands will continue to increase the intensity of the oil and gas impacts that the community is currently facing since it will be allowed to be developed substantially closer to housing.
- **Noise**
 - There are sites in Counselor that are less than a quarter mile from housing areas. These sites produce loud noises which carry across the relatively flat areas at all times (night and day). This is a degradation to the environment of the housing areas. Also, increased traffic, and particularly heavy traffic, creates a great

deal of noise day and night.

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◦ **Pollutants**

- The chapter is concerned with the length of time it is taking the the BLM FFO to implement gas leak detection program with infrared cameras:

The FFO purchased an infrared camera designed to detect natural gas leaks on and around well pad and pipeline facilities. FFO inspection personnel have been trained to operate the camera and FFO is currently developing a strategy to implement the use of the camera in cooperation with oil and gas operators to detect and eliminate natural gas leaks in well pad and pipeline infrastructure. (BLM Jan 2015 EA page 9)

- This program has been in development for a substantial amount of time (on the scale of years) even though the equipment has already been purchased and staff trained. Although there may be a multitude of reasons why the BLM has been unable to implement this project (of which physical equipment and training are not among), it indicates that the BLM FFO does not have the resources to implement such air quality control measures in a timely manner.
- The chapter recommends that the BLM defer all parcels until it can begin operating its natural gas leak detection program.

◦ **Traffic and Dust**

- Currently, most of the Oil and Gas traffic does not come into residential areas in the chapters. Traffic counts have indicated that 31% of traffic on main roads is derived from oil and gas traffic in Counselor. However, this does not include the traffic which is diverted on a primarily oil and gas road that extends from US HWY 550 (Lovatos bar) south. This traffic is almost 100% oil and gas traffic is at 60 vehicles an hour. If this traffic was on Counselor's roads it would almost double the traffic.
- Since these parcels are residential zones within the chapters, this traffic will directly effect not just the primary roads but the secondary and tertiary roads within the residential areas. This higher traffic will cause traffic flow issues, increases in dust, and potential safety issues. It may also push current traffic patterns to change and use other roads which may not be of as high quality.

▲ **Issues with non-occupied housing**

- The current stipulation utilizes 660' from occupied houses. However, it may be common for houses to not be occupied for long periods of time. This may be due to temporary job oppurtunities, health issues, or other circumstances. Traditionally Navajos had been mobile have various camps throughout the year. Although this settlement pattern is not as prevelent or exist for the same reasons, this tendency still exists for some Navajos. As a result, some households might not be occupied but it is likely that it will be in the future. Thus the chapter would recommend that the stipulation be applied to all Navajo structures.
- The BLM will likely need to develop stipulations designed for Navajo areas. This will likely happen via the current RMP amendment, however, these new stipulations have not been developed yet since the RMP amendment is still under development. Thus the chapter recommends that all parcels are deferred until the RMP amendment is implemented.

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▲ **Issues with non-improved homesites**

- Although homesites are supposed to be improved within a certain amount of time after being issued to residents, this improvement does not always constitute an occupied house. As a result, the BLM should be aware of the fact that unimproved homesites may exist in the parcels for lease and that this could lead to land use conflicts with oil and gas development.
- Current stipulations do not cover this situation, the RMP amendment may develop more appropriate stipulations to protect these tribal residents.

▲ **Chapter Recommendation**

- The chapter feels that 660' stipulation is insufficient to protect the tribal populations that reside within the parcels being considered for lease in January 2015. Proper stipulations to protect tribal populations will be complicated and require more consultation with the Navajo Nation and chapters. This is what was recommended by the BLM for the October 2014 lease sale, and the chapter feels that this was an excellent management decision. Unfortunately, this further meaningful consultation has not occurred and the parcels selected for January 2015 are amongst the most densely populated residential areas. Thus, the chapter recommends that all 5 parcels are removed from the January 2015 lease sale so the BLM may actually commence with its own previous recommendation of further consultation.

Accidents

- ▲ There has been an increasing number of accidents involving oil/gas sites in the Counselor area. Many of these incidents have occurred away from populated areas. However, the proposed parcels would bring the activity within 660 feet of occupied houses. These accidents would have a substantially greater impact upon residents in the area if they were to occur within close proximity of populated locates.
- ▲ The potential and perceived risk by residents could have detrimental impacts on the future development of the parcels, thus the Ojo Encino chapter government suggests increased distances from households as opposed to only 660 feet. All 5 parcels for the January 2015 lease sale should be removed pending further consultation and analysis.

RMP Amendment Process

- ▲ Currently the BLM FFO is amending its RMP for Mancos/Gallup development. Upon review of the PDS report, the offending producing wells are all located in the Mancos formation. However, the BLM is striving to develop amendments to the current RMP regarding development of this formation. Unfortunately, this amendment process is not complete, thus the amendments might not fully apply to these parcels. Considering the potential severe impacts on residents in the parcels, all precautions should be taken to ensure these potential impacts are as mitigated as possible.
- ▲ Thus it would seem to make sense that the BLM does not lease out parcels which are likely to develop a formation which is currently under review for a RMP amendment until the amendment process is finished. This was done in the Rio Puerco field office during the development of their new RMP without consequence, and appears to have been a wise management decision to protect the public in areas surrounding potential lease locations. Thus all 5 parcels for the January 2015 sale should be removed.

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BIA-5 Stipulation

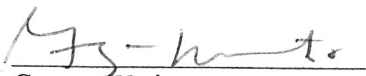
- ^ Ojo Encino chapter feels that stipulation BIA-5 should help in the prevention of incompatible land use on the lease parcels and should help to mitigate overall impacts. However, the chapter is concerned about developments which will take place at the boundary of the lease parcels which could adversely impact tribal development within the parcels. The chapter feels that a 660' boundary of no development should be included as a buffer surrounding the lease parcels to help mitigate impacts on future and current development.
- ^ The chapter assumes that BIA-5 applies to the entirety of all five parcels.
In addition, the BIA-5, No Surface Occupancy, would apply to the entirety of the lease in order to minimize the impacts from development on occupied residences. (DOI-BLM-NM-F010-2013-0451-EA: page 8)

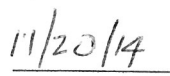
If this is not the case than the chapter believes that this stipulation should apply to all lands within all parcels.

Lastly, the Navajo Nation and concurrence of the BIA regional Director is needed to waive this stipulation. The Ojo Encino chapter wants assurances that the waiver process also includes the local level chapters so that their input and guidance is heeded during the process.

Overall Recommendation

- ^ Considering the immense sensitivity of the parcels being considered for lease and the potential for very large direct impacts that could take place to tribal populations on all 5 parcels, the chapter recommends that all 5 parcels are removed from the January 2015 lease sale so further consultation and analysis may take place.


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